

4567

2013-2014 Regular Sessions

I N A S S E M B L Y

February 6, 2013

Introduced by M. of A. KOLB, OAKS, WALTER, REILICH, PALMESANO, MONTESANO, P. LOPEZ, GOODELL, RAIA, HAWLEY, BARCLAY -- Multi-Sponsored by -- M. of A. CERETTO, McLAUGHLIN -- read once and referred to the Committee on Economic Development

AN ACT to amend the economic development law and the tax law, in relation to enacting the BizBoom program act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The economic development law is amended by adding a new  
2 article 21 to read as follows:

3 ARTICLE 21

4 BIZBOOM PROGRAM ACT

5 SECTION 450. SHORT TITLE.

6 451. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION.

7 452. DEFINITIONS.

8 453. ELIGIBILITY CRITERIA.

9 454. APPLICATION AND APPROVAL PROCESS.

10 455. POWERS AND DUTIES OF THE COMMISSIONER.

11 S 450. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS  
12 THE "BIZBOOM PROGRAM ACT".

13 S 451. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION. IT IS HEREBY  
14 FOUND AND DECLARED THAT NEW YORK STATE NEEDS, AS A MATTER OF PUBLIC  
15 POLICY, TO CREATE COMPETITIVE FINANCIAL INCENTIVES FOR BUSINESSES TO  
16 LOCATE AND INVEST IN NEW YORK STATE. THE BIZBOOM PROGRAM ACT IS CREATED  
17 TO INCENTIVIZE THE SITING OF NEW BUSINESSES AND THE CREATION OF BUSI-  
18 NESSES IN OUR STATE.

19 THIS LEGISLATION CREATES THE BIZBOOM PROGRAM, WHICH PROVIDES A TAX  
20 EXEMPT BENEFIT TO NEW BUSINESSES RELOCATING TO OR STARTING UP A NEW  
21 BUSINESS IN NEW YORK. THE BIZBOOM TAX EXEMPTION FOR QUALIFYING BUSI-  
22 NESSES IS ONE HUNDRED PERCENT THE FIRST YEAR, FIFTY PERCENT OF THE BUSI-  
23 NESS TAX LIABILITY IN THE SECOND YEAR, AND A TWENTY-FIVE PERCENT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 EXEMPTION IN THE THIRD YEAR. THIS EXEMPTION WOULD DISCONTINUE AFTER  
2 THREE YEARS AND ANY PARTICIPATING BUSINESS THAT LEAVES THE STATE BEFORE  
3 COMPLETING SIX YEARS OF OPERATION WOULD BE LIABLE TO REPAY ALL TAX BENE-  
4 FITS RECEIVED UNDER THE PROGRAM. THESE EXEMPTIONS ARE DESIGNED TO  
5 PROMOTE BUSINESS EXPANSION AND INCREASE JOBS IN NEW YORK STATE. AT THE  
6 SAME TIME, THE PROGRAM PROTECTS STATE TAXPAYERS' DOLLARS BY ENSURING  
7 THAT NEW YORK PROVIDES TAX BENEFITS ONLY TO BUSINESSES THAT REPRESENT  
8 NEW INVESTMENT IN OUR STATE.

9 S 452. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE: 1. "BIZBOOM  
10 BUSINESS" MEANS A BUSINESS ENTITY THAT HAS BEEN DETERMINED TO BE A NEWLY  
11 FORMED BUSINESS IN NEW YORK, AS DETERMINED BY THE COMMISSIONER OF TAXA-  
12 TION AND FINANCE AND THE DEPARTMENT.

13 2. "CERTIFICATE OF ELIGIBILITY" MEANS THE DOCUMENT ISSUED BY THE  
14 DEPARTMENT TO AN APPLICANT THAT HAS COMPLETED AN APPLICATION TO BE  
15 ADMITTED INTO THE BIZBOOM PROGRAM AND HAS BEEN ACCEPTED INTO THE PROGRAM  
16 BY THE DEPARTMENT. POSSESSION OF A CERTIFICATE OF ELIGIBILITY DOES NOT  
17 BY ITSELF GUARANTEE THE ELIGIBILITY TO CLAIM THE TAX EXEMPTION.

18 3. "CERTIFICATE OF TAX EXEMPTION" MEANS THE DOCUMENT ISSUED TO A  
19 PARTICIPANT BY THE DEPARTMENT AS AUTHORIZED BY THE DEPARTMENT OF TAXA-  
20 TION AND FINANCE, AFTER THE DEPARTMENT HAS VERIFIED THAT THE PARTICIPANT  
21 HAS MET ALL APPLICABLE ELIGIBILITY CRITERIA IN THIS ARTICLE.

22 S 453. ELIGIBILITY CRITERIA. 1. TO BE A PARTICIPANT IN THE BIZBOOM  
23 PROGRAM, A QUALIFYING BUSINESS ENTITY SHALL HAVE NOT OPERATED OR SHALL  
24 NOT HAVE HAD NEXUS IN NEW YORK STATE PRIOR TO THE FIRST YEAR OF THE  
25 IMPLEMENTATION OF THIS ACT AND ANY OTHER CRITERIA ESTABLISHED BY THE  
26 COMMISSIONER IN REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE. IN  
27 PROMULGATING SUCH REGULATIONS THE COMMISSIONER SHALL INCLUDE A REVIEW OF  
28 SUCH NEW BUSINESS CREATION CRITERIA.

29 2. FOR THE PURPOSES OF THIS ARTICLE, IN ORDER TO PARTICIPATE IN THE  
30 BIZBOOM JOBS PROGRAM A BUSINESS MUST BE IN COMPLIANCE WITH ALL WORKER  
31 PROTECTION AND ENVIRONMENTAL LAWS AND REGULATIONS. IN ADDITION, A BUSI-  
32 NESS MAY NOT OWE PAST DUE STATE TAXES, LOCAL PROPERTY TAXES OR ANY FINES  
33 ISSUED BY THE STATE OR MUNICIPALITY.

34 S 454. APPLICATION AND APPROVAL PROCESS. 1. A BUSINESS ENTITY MUST  
35 SUBMIT A COMPLETED APPLICATION AS PRESCRIBED BY THE COMMISSIONER.

36 2. AS PART OF SUCH APPLICATION, EACH BUSINESS ENTITY MUST:

37 (A) AGREE TO ALLOW THE DEPARTMENT TO SHARE ITS TAX INFORMATION WITH  
38 THE DEPARTMENT OF LABOR AND DEPARTMENT OF TAXATION AND FINANCE. HOWEVER,  
39 ANY INFORMATION SHARED AS A RESULT OF THIS AGREEMENT SHALL NOT BE AVAIL-  
40 ABLE FOR DISCLOSURE OR INSPECTION UNDER THE STATE FREEDOM OF INFORMATION  
41 LAW.

42 (B) AGREE TO ALLOW THE DEPARTMENT OF LABOR AND DEPARTMENT OF TAXATION  
43 AND FINANCE TO SHARE ITS TAX AND EMPLOYER INFORMATION WITH THE DEPART-  
44 MENT. HOWEVER, ANY INFORMATION SHARED AS A RESULT OF THIS AGREEMENT  
45 SHALL NOT BE AVAILABLE FOR DISCLOSURE OR INSPECTION UNDER THE STATE  
46 FREEDOM OF INFORMATION LAW.

47 (C) ALLOW THE DEPARTMENT AND ITS AGENTS ACCESS TO ANY AND ALL BOOKS  
48 AND RECORDS THE DEPARTMENT MAY REQUIRE TO MONITOR COMPLIANCE.

49 (D) PROVIDE THE FOLLOWING INFORMATION TO THE DEPARTMENT UPON REQUEST:

50 (I) A PLAN OUTLINING THE SCHEDULE FOR JOB CREATION AND INVESTMENTS;

51 (II) UNEMPLOYMENT INSURANCE QUARTERLY RETURNS, REAL PROPERTY TAX BILLS  
52 AND AUDITED FINANCIAL STATEMENTS;

53 (III) THE AMOUNT AND DESCRIPTION OF PROJECTED TAX LIABILITY FOR WHICH  
54 IT PLANS TO CLAIM THE BIZBOOM TAX EXEMPTIONS; AND

1 (IV) THE EMPLOYER IDENTIFICATION OR SOCIAL SECURITY NUMBERS FOR ALL  
2 RELATED PERSONS TO THE APPLICANT, INCLUDING THOSE OF ANY MEMBERS OF A  
3 LIMITED LIABILITY COMPANY OR PARTNERS IN A PARTNERSHIP.

4 (E) CERTIFY, UNDER PENALTY OF PERJURY, THAT IT IS IN SUBSTANTIAL  
5 COMPLIANCE WITH ALL ENVIRONMENTAL, WORKER PROTECTION, AND LOCAL, STATE,  
6 AND FEDERAL TAX LAWS.

7 3. AFTER REVIEWING A BUSINESS ENTITY'S COMPLETED APPLICATION AND  
8 DETERMINING THAT THE BUSINESS ENTITY WILL MEET THE CONDITIONS SET FORTH  
9 IN SECTION FOUR HUNDRED FIFTY-THREE OF THIS ARTICLE, THE DEPARTMENT MAY  
10 ADMIT THE APPLICANT INTO THE PROGRAM AND PROVIDE THE APPLICANT WITH A  
11 CERTIFICATE OF ELIGIBILITY.

12 4. IN ORDER TO BECOME A PARTICIPANT IN THE PROGRAM, AN APPLICANT MUST  
13 SUBMIT EVIDENCE OF BEING A NEWLY FORMED BUSINESS ENTITY IN SUCH FORM AS  
14 THE COMMISSIONER MAY PRESCRIBE. AFTER REVIEWING SUCH EVIDENCE AND FIND-  
15 ING IT SUFFICIENT, THE DEPARTMENT SHALL CERTIFY THE APPLICANT AS A  
16 PARTICIPANT AND ISSUE TO THAT PARTICIPANT A CERTIFICATE OF TAX  
17 EXEMPTION.

18 5. A PARTICIPANT MAY CLAIM TAX BENEFITS COMMENCING IN THE FIRST TAXA-  
19 BLE YEAR THAT THE BUSINESS ENTITY RECEIVES A CERTIFICATE OF TAX  
20 EXEMPTION. A PARTICIPANT MAY CLAIM A TAX EXEMPTION OF ONE HUNDRED  
21 PERCENT OF THE TAX LIABILITY IN THE FIRST YEAR OF OPERATION, FIFTY  
22 PERCENT EXEMPTION OF THE BUSINESS TAX LIABILITY IN THE SECOND YEAR OF  
23 OPERATION, AND A TWENTY-FIVE PERCENT EXEMPTION OF THE BUSINESS TAX  
24 LIABILITY IN THE THIRD YEAR OF OPERATION, PROVIDED THAT THE PARTICIPANT  
25 DEMONSTRATES TO THE DEPARTMENT THAT IT CONTINUES TO SATISFY THE ELIGI-  
26 BILITY CRITERIA SPECIFIED IN SECTION FOUR HUNDRED FIFTY-THREE OF THIS  
27 ARTICLE AND SUBDIVISION TWO OF THIS SECTION IN EACH OF THOSE TAXABLE  
28 YEARS.

29 S 455. POWERS AND DUTIES OF THE COMMISSIONER. 1. THE COMMISSIONER  
30 SHALL PROMULGATE REGULATIONS ESTABLISHING AN APPLICATION PROCESS AND  
31 ELIGIBILITY CRITERIA, THAT WILL BE APPLIED CONSISTENT WITH THE PURPOSES  
32 OF THIS ARTICLE.

33 2. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF  
34 TAXATION AND FINANCE, DEVELOP A CERTIFICATE OF TAX EXEMPTION THAT SHALL  
35 BE ISSUED BY THE COMMISSIONER TO PARTICIPANTS. PARTICIPANTS MUST INCLUDE  
36 THE CERTIFICATE OF TAX EXEMPTION WITH THEIR TAX RETURN TO RECEIVE ANY  
37 TAX BENEFITS UNDER THIS ARTICLE.

38 3. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF  
39 TAXATION AND FINANCE AND THE DEPARTMENT OF LABOR, DETERMINE THE ELIGI-  
40 BILITY OF ANY APPLICANT APPLYING FOR ENTRY INTO THE PROGRAM AND SHALL  
41 REMOVE ANY PARTICIPANT FROM THE PROGRAM FOR FAILING TO MEET ANY OF THE  
42 REQUIREMENTS SET FORTH IN SECTION FOUR HUNDRED FIFTY-THREE AND FOUR  
43 HUNDRED FIFTY-FOUR OF THIS ARTICLE.

44 S 2. The tax law is amended by adding a new section 38 to read as  
45 follows:

46 S 38. BIZBOOM PROGRAM EXEMPTION. (A) GENERAL. A TAXPAYER SUBJECT TO  
47 TAX UNDER ARTICLES NINE-A AND TWENTY-TWO OF THIS CHAPTER SHALL BE  
48 ALLOWED AN EXEMPTION AGAINST SUCH TAX, ALLOWABLE FOR UP TO THREE CONSEC-  
49 UTIVE TAXABLE YEARS, IS PROVIDED AS FOLLOWS:

50 (1) ONE HUNDRED PERCENT EXEMPTION IN YEAR ONE OF OPERATION;

51 (2) FIFTY PERCENT EXEMPTION IN YEAR TWO OF OPERATION; AND

52 (3) TWENTY-FIVE PERCENT EXEMPTION IN YEAR THREE OF OPERATION.

53 (B) TO BE ELIGIBLE FOR THE BIZBOOM PROGRAM EXEMPTION, THE TAXPAYER  
54 SHALL HAVE BEEN ISSUED A "CERTIFICATE OF TAX EXEMPTION" BY THE DEPART-  
55 MENT OF ECONOMIC DEVELOPMENT PURSUANT TO SUBDIVISION FOUR OF SECTION  
56 FOUR HUNDRED FIFTY-FOUR OF THE ECONOMIC DEVELOPMENT LAW, WHICH CERTIF-

1 ICATE SHALL SET FORTH THE AMOUNT OF EACH EXEMPTION COMPONENT THAT MAY BE  
2 CLAIMED FOR THE TAXABLE YEAR. A TAXPAYER MAY CLAIM SUCH EXEMPTION FOR  
3 THREE CONSECUTIVE TAXABLE YEARS COMMENCING IN THE FIRST TAXABLE YEAR  
4 THAT THE TAXPAYER RECEIVES A CERTIFICATE OF TAX EXEMPTION. THE TAXPAYER  
5 SHALL BE ALLOWED TO CLAIM ONLY THE PERCENTAGE AMOUNT LISTED ON THE  
6 CERTIFICATE OF TAX EXEMPTION FOR THAT TAXABLE YEAR. SUCH CERTIFICATE  
7 SHOULD BE ATTACHED TO THE TAXPAYER'S RETURN. NO COST OR EXPENSE PAID OR  
8 INCURRED BY THE TAXPAYER SHALL BE THE BASIS FOR MORE THAN ONE COMPONENT  
9 OF THIS EXEMPTION OR ANY OTHER TAX EXEMPTION.

10 (C) EXEMPTION RECAPTURE. IF A CERTIFICATE OF ELIGIBILITY OR A CERTIF-  
11 ICATE OF TAX EXEMPTION ISSUED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT  
12 UNDER ARTICLE TWENTY-ONE OF THE ECONOMIC DEVELOPMENT LAW IS REVOKED BY  
13 SUCH DEPARTMENT, THE AMOUNT OF EXEMPTION DESCRIBED IN THIS SECTION AND  
14 CLAIMED BY THE TAXPAYER PRIOR TO THAT REVOCATION SHALL BE ADDED BACK TO  
15 INCOME IN THE TAXABLE YEAR IN WHICH ANY SUCH REVOCATION BECOMES FINAL.

16 S 3. The tax law is amended by adding a new section 207-c to read as  
17 follows:

18 S 207-C. EXEMPTION OF BIZBOOM PROGRAM PARTICIPANTS. THIS ARTICLE SHALL  
19 NOT APPLY TO ANY BUSINESS ENTITY WHICH IS A QUALIFIED BIZBOOM PARTIC-  
20 IPANT AS PROVIDED BY SECTION THIRTY-EIGHT OF THIS CHAPTER.

21 S 4. Section 210 of the tax law is amended by adding a new subdivision  
22 46 to read as follows:

23 46. BIZBOOM PROGRAM EXEMPTION. (A) ALLOWANCE OF EXEMPTION. A TAXPAYER  
24 WILL BE ALLOWED AN EXEMPTION, TO BE COMPUTED AS PROVIDED IN SECTION  
25 THIRTY-EIGHT OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

26 (B) APPLICATION OF EXEMPTION. THE EXEMPTION ALLOWED UNDER THIS SUBDI-  
27 VISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO  
28 LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D)  
29 OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF EXEMPTION  
30 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO  
31 SUCH AMOUNT, ANY AMOUNT OF EXEMPTION THUS NOT DEDUCTIBLE IN SUCH TAXABLE  
32 YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE EXEMPTED OR REFUNDED  
33 IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF  
34 THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF  
35 SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO  
36 INTEREST WILL BE PAID THEREON.

37 S 5. Section 601 of the tax law is amended by adding a new subsection  
38 (j) to read as follows:

39 (J) BIZBOOM PROGRAM PARTICIPANTS. A QUALIFYING BUSINESS ENTITY,  
40 PARTICIPATING IN THE BIZBOOM PROGRAM PURSUANT TO ARTICLE TWENTY OF THE  
41 ECONOMIC DEVELOPMENT LAW, WHICH IS TAXABLE AS A BUSINESS ENTITY FOR  
42 FEDERAL INCOME TAX PURPOSES SHALL NOT BE SUBJECT TO TAX UNDER THIS ARTI-  
43 CLE; SUBJECT TO THE LIMITATION AS PROVIDED FOR BY SECTION THIRTY-EIGHT  
44 OF THIS CHAPTER.

45 S 6. Section 606 of the tax law is amended by adding a new subsection  
46 (vv) to read as follows:

47 (VV) BIZBOOM PROGRAM PARTICIPANTS. CREDITS ALLOWABLE UNDER THIS  
48 SECTION THAT A TAXPAYER IS ELIGIBLE FOR THAT RELATE TO THE BUSINESS WILL  
49 BE REDUCED BY ONE HUNDRED PERCENT IN THE FIRST YEAR OF OPERATION, FIFTY  
50 PERCENT IN THE SECOND YEAR OF OPERATION, AND TWENTY-FIVE PERCENT IN THE  
51 THIRD YEAR OF OPERATION.

52 S 7. Subsection (c) of section 612 of the tax law is amended by adding  
53 a new paragraph 39 to read as follows:

54 (39) BUSINESS INCOME, TO THE EXTENT INCLUDIBLE IN GROSS INCOME FOR  
55 FEDERAL INCOME TAX PURPOSES, IF THE TAXPAYER IS AUTHORIZED UNDER THE  
56 BIZBOOM PROGRAM; ONE HUNDRED PERCENT OF BUSINESS INCOME WILL BE

1 SUBTRACTED FROM FEDERALLY ADJUSTED GROSS INCOME IN THE FIRST YEAR, FIFTY  
2 PERCENT IN THE SECOND YEAR, AND TWENTY-FIVE PERCENT IN THE THIRD YEAR.

3 S 8. Subsection (c) of section 615 of the tax law is amended by adding  
4 a new paragraph 9 to read as follows:

5 (9) THE AMOUNT OF ANY FEDERAL DEDUCTION FOR ANY BUSINESS RELATED  
6 EXPENSE FOR A TAXPAYER AUTHORIZED UNDER THE BIZBOOM PROGRAM WILL BE  
7 REDUCED BY ONE HUNDRED PERCENT IN THE FIRST YEAR, FIFTY PERCENT IN THE  
8 SECOND YEAR, AND TWENTY-FIVE PERCENT IN THE THIRD YEAR.

9 S 9. Notwithstanding any other provision of law, rule or regulation,  
10 any and all application fees related to the creation of a business enti-  
11 ty shall be reduced by fifty percent.

12 S 10. This act shall take effect January 1, 2014.